
By: **Delegates O'Donnell, Amedori, Baldwin, Bartlett, Boschert, Boutin, Bozman, Brinkley, Cadden, Cryor, DeCarlo, Dewberry, Donoghue, Eckardt, Edwards, Elliott, Flanagan, Getty, Giannetti, Glassman, Greenip, Hutchins, Kach, J. Kelly, K. Kelly, Kittleman, Klausmeier, Klima, La Vay, Leopold, Linton, McClenahan, McKee, Malone, Minnick, Murphy, Owings, Parrott, Ports, Redmer, Rzepkowski, Schisler, Shank, Snodgrass, Stocksdale, Stull, Walkup, Weir, Wood, Bohanan, Conway, Mitchell, Burns, Riley, Valderrama, Barkley, Griffith, Franchot, Mohorovic, Conroy, D'Amato, Love, Rosso, Sophocleus, Clagett, Rudolph, Moe, Guns, Hammen, James, Patterson, and Taylor**

Introduced and read first time: February 11, 2000

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure - Review of Sentence - Exception for Handgun and**
3 **Assault Pistol Crimes**

4 FOR the purpose of prohibiting a certain panel of judges when reviewing a sentence
5 from decreasing a mandatory minimum sentence imposed for certain crimes
6 involving handguns and assault pistols; and generally relating to reviews of
7 mandatory minimum sentences.

8 BY repealing and reenacting, without amendments,
9 Article 27 - Crimes and Punishments
10 Section 36B(d) and 36H-6(b)
11 Annotated Code of Maryland
12 (1996 Replacement Volume and 1999 Supplement)

13 BY repealing and reenacting, with amendments,
14 Article 27 - Crimes and Punishments
15 Section 645JC
16 Annotated Code of Maryland
17 (1996 Replacement Volume and 1999 Supplement)

18 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
19 MARYLAND, That the Laws of Maryland read as follows:

1

Article 27 - Crimes and Punishments

2 36B.

3 (d) Any person who shall use a handgun or an antique firearm capable of
4 being concealed on the person in the commission of any felony or any crime of violence
5 as defined in § 441 of this article, whether operable or inoperable at the time of the
6 offense, shall be guilty of a separate misdemeanor and on conviction thereof shall, in
7 addition to any other sentence imposed by virtue of commission of said felony or
8 misdemeanor:

9 (1) For a first offense, be sentenced to the Maryland Division of
10 Correction for a term of not less than 5 nor more than 20 years, and:

11 (i) It is mandatory upon the court to impose no less than the
12 minimum sentence of 5 years; and

13 (ii) Except as otherwise provided in § 4-305 of the Correctional
14 Services Article, the person is not eligible for parole in less than 5 years; and

15 (2) For a second or subsequent offense, be sentenced to the Maryland
16 Division of Correction for a term of not less than 5 nor more than 20 years, and it is
17 mandatory upon the court to impose no less than a minimum consecutive sentence of
18 5 years which shall be served consecutively and not concurrently to any other
19 sentence imposed by virtue of the commission of said felony or misdemeanor.

20 36H-6.

21 (b) Any person who uses an assault pistol, or a magazine that has a capacity of
22 more than 20 rounds of ammunition, in the commission of any felony or any crime of
23 violence as defined in § 441 of this article shall be guilty of a separate misdemeanor
24 and on conviction thereof shall, in addition to any other sentence imposed by virtue of
25 commission of the felony or misdemeanor:

26 (1) For a first offense, be sentenced to the Maryland Division of
27 Correction for a term of not less than 5 nor more than 20 years, and:

28 (i) It is mandatory upon the court to impose no less than the
29 minimum sentence of 5 years no part of which shall be suspended; and

30 (ii) Except as otherwise provided in § 4-305 of the Correctional
31 Services Article, the person is not eligible for parole in less than 5 years; and

32 (2) For a second or subsequent offense, be sentenced to the Maryland
33 Division of Correction for a term of not less than 10 nor more than 20 years, and it is
34 mandatory upon the court to impose no less than a minimum sentence of 10 years
35 which shall be served consecutively and not concurrently to any other sentence
36 imposed by virtue of the commission of the felony or misdemeanor.

1 645JC.

2 (a) The panel shall have the right to require the Division of Parole and
3 Probation to investigate, report, and make recommendations with regard to any such
4 application for review.

5 (b) (1) The panel shall consider each application for review and shall have
6 the power, with a hearing, to order a different sentence to be imposed or served,
7 including, by way of illustration and not by way of limitation, an increased or
8 decreased sentence, or a suspended sentence to be served in whole or in part, or a
9 sentence to be suspended with or without probation, upon such terms and conditions
10 as the panel may deem just and which could lawfully have been imposed by the
11 sentencing court at the time of the imposition of the sentence under review, or the
12 panel may decide that the sentence under review should remain unchanged.

13 (2) (i) In the manner provided in this section, and subject to [item (ii)]
14 ITEMS (II) AND (III) of this paragraph, the panel may order a different sentence,
15 including a decrease, in a mandatory minimum sentence otherwise required by law.

16 (ii) A panel may not order a decrease in a mandatory minimum
17 sentence unless the panel's decision is unanimous.

18 (III) A PANEL MAY NOT DECREASE A MANDATORY MINIMUM
19 SENTENCE IMPOSED UNDER § 36B(D) OR § 36H-6(B) OF THIS ARTICLE.

20 (c) Without holding a hearing, the panel may decide that the sentence under
21 review should remain unchanged.

22 (d) The panel may not increase a sentence for imprisonment for life,
23 imprisonment for life without the possibility of parole, or a term of years to the
24 sentence of death.

25 (e) The decision of the panel in each review shall be rendered by a majority of
26 the members of the panel and shall be rendered within thirty days from the filing
27 date of the application for review.

28 (f) If the panel orders any different sentence, the panel shall resentence and
29 notify the convicted person in accordance with the order of the panel.

30 (g) Time served on any sentence under review shall be deemed to have been
31 served on the sentence substituted.

32 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
33 October 1, 2000.